

§ 23.21

(i) There is a reasonable basis to conclude that you could achieve a level of ACDBE participation consistent with the objectives of this part using different or innovative means other than those that are provided in subpart B or D of this part;

(ii) Conditions at your airport are appropriate for implementing the proposal;

(iii) Your proposal would prevent discrimination against any individual or group in access to concession opportunities or other benefits of the program; and

(iv) Your proposal is consistent with applicable law and FAA program requirements.

(3) The FAA Administrator has the authority to approve your application. If the Administrator grants your application, you may administer your ACDBE program as provided in your proposal, subject to the following conditions:

(i) ACDBE eligibility is determined as provided in subpart C of this part, and ACDBE participation is counted as provided in §§ 23.53 through 23.55.

(ii) Your level of ACDBE participation continues to be consistent with the objectives of this part;

(iii) There is a reasonable limitation on the duration of the your modified program; and

(iv) Any other conditions the Administrator makes on the grant of the waiver.

(4) The Administrator may end a program waiver at any time and require you to comply with this part's provisions. The Administrator may also extend the waiver, if he or she determines that all requirements of this section continue to be met. Any such extension shall be for no longer than period originally set for the duration of the program waiver.

[70 FR 14508, Mar. 22, 2005, as amended at 72 FR 15616, Apr. 2, 2007]

Subpart B—ACDBE Programs

§ 23.21 Who must submit an ACDBE program to FAA, and when?

(a) Except as provided in paragraph (e) of this section, if you are a primary airport that has or was required to have a concessions DBE program prior

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to April 21, 2005, you must submit a revised ACDBE program meeting the requirements of this part to the appropriate FAA regional office for approval.

(1) You must submit this revised program on the same schedule provided for your first submission of overall goals in § 23.45(a) of this part.

(2) Timely submission and FAA approval of your revised ACDBE program is a condition of eligibility for FAA financial assistance.

(3) Until your new ACDBE program is submitted and approved, you must continue to implement your concessions DBE program that was in effect before the effective date of this amendment to part 23, except with respect to any provision that is contrary to this part.

(b) If you are a primary airport that does not now have a DBE concessions program, and you apply for a grant of FAA funds for airport planning and development under 49 U.S.C. 47107 *et seq.*, you must submit an ACDBE program to the FAA at the time of your application. Timely submission and FAA approval of your ACDBE program are conditions of eligibility for FAA financial assistance.

(c) If you are the owner of more than one airport that is required to have an ACDBE program, you may implement one plan for all your locations. If you do so, you must establish a separate ACDBE goal for each location.

(d) If you make any significant changes to your ACDBE program at any time, you must provide the amended program to the FAA for approval before implementing the changes.

(e) If you are a non-primary airport, non-commercial service airport, a general aviation airport, reliever airport, or any other airport that does not have scheduled commercial service, you are not required to have an ACDBE program. However, you must take appropriate outreach steps to encourage available ACDBEs to participate as concessionaires whenever there is a concession opportunity.

§ 23.23 What administrative provisions must be in a recipient's ACDBE program?

(a) If, as a recipient that must have an ACDBE program, the program must